IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1060 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

MINOR PRAKASH MAGANBHAI PADHIYAR

Appearance:

1. First Appeal No. 1060 of 1988

Ms MAYA DESAI for MR MD PANDYA for Petitioner No. 1-2

MR NILESH A PANDYA for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE KUNDAN SINGH

Date of decision: 03/12/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

1. The Appellant - Gujarat State Road Transport Corporation and its driver Sabir Ismail Patel have

challenged in this Appeal the impugned Judgment and Award dated 23.12.1987 passed by the learned Motor Accident Claim Tribunal (main), Bharuch in M.A.C.Petition No.711 of 1985 filed by the respondent - claimant Maganbhai Ashabhai Padhiyar for the personal injury caused to his minor son Prakash Maganbhai Padhiyar in a motor accident which took place on 7.10.1984.

2. In the instant case the accident in question took place on 7.10.1984 at 10.30 p.m. in which minor Prakash Maganbhai Padhiyar, hardly aged about 8 years old lost his left leg. He received various other injuries on his person. Claim Petition No.711 of 1985 came to be filed in 1985 before learned Tribunal claiming Rs.2,50,000/- by way of compensation. However, learned Tribunal partly allowed the claim petition and awarded only Rs.1,53,750/to the claimant with cost and interest on it. The appellants have challenged the same in this Appeal, however, they have restricted their challenge to Rs.51,000/- only, meaning thereby the learned Tribunal has rightly awarded at least Rs.51,000/- as against the award of Rs.1,53,750/- by the Tribunal.

3. Maganbhai Ashabhai Padhiyar, father of minor claimant Ex.40 has stated in his evidence that in the accident his minor son Prakash received injuries on his both the legs, hands and head. Initially for a period of 2 months prakash was kept as an indoor patient in S.S.G. Hospital. During that period at least 3 operations were performed. First time his left leg was amputate below the knee and thereafter in the 2nd operation his leg was amputate from above the knee. Right toes of his right leg had come out and serious injuries were caused to his bones. Skin head to be removed from his right leg for using it on his left leg. After 2 months of discharge from the hospital he had to be again admitted in the hospital where his bone was operated and for that he has to remained in hospital at least for 3 to 4 days. He and his wife are agricultural labourers. Because of the accident caused to their minor son Prakash both of them could not attend their work for 1-1/2 months and since the accident his wife was unable to work because she had to look after their minor son Prakash. At the time of accident Prakash was studying in 3rd standard. He was brilliant in study. They wanted to make him Engineer, but now because of the injury they would not be able to make him as Engineer. His Brother in Law (wife's brother Arjun) was studying in Engineering College and Engineer gets Rs.2500/- as salary per month. They have to prepare special toilet for their son and every year they had to change artificial limb, while walking if Prakash dashed

with some hard substance then immediately blood comes out from his leg. This evidence in chief of Maganbhai, father of minor Prakash, has not been taken in his cross examination. In fact there is no cross examination to the aforesaid statement made by Maganbhai in his Examination in Chief. In his Cross examination he has stated that Prakash had come to the court with the help of clutches as he used to walk with the help of clutches. He denied the fact that after the accident his son Prakash goes to school alone with the help of clutches.

4. Dr.Ashutosh Nanavati, Ex.43, has issued the Certificate regarding injuries and permanent disability of Prakash, stated that physical functional impairment of left lower limb of Prakash was 85 %. He has further stated that artificial limb will have to be changed at a periodical interval of one year till he attains the age of 18. Even with the artificial limb there will be an impairment. The cost of artificial limb would be about Rs.1500/- to Rs.2000/-. It has come out in his cross examination that Prakash will have to change his artificial limb for about 6 times.

5. Considering the aforesaid evidence of the witnesses the learned Tribunal awarded Rs.40,000/towards pain, shock and suffering, Rs.2000/- towards medicines, Rs.1000/- for special diet, Rs.2000/- for transport charges, Rs.8000/- towards expenses for artificial limb, Rs.9010/- towards miscellaneous expenses, Rs.1340/towards economic loss to the appellant, Rs.1500/- towards cost of special latrine and Rs.96,000/towards future loss of income. In all the Tribunal has awarded Rs.1,53,750/- to the claimant.

6. Learned Counsel Ms.Desai for the appellant submitted that she is challenging the Award passed by the learned tribunal mainly on two heads i.e. (i) pain, shock and suffering and (ii) future loss of income.

7. According to her first submission the learned Tribunal has wrongly awarded Rs.40,000/- towards pain, shock and suffering. She submitted that even in a case where a young man aged 25 years who loose his both the legs was awarded only Rs.35,000/- by the Division Bench of this Court in a case of Mohmed Hanif v/s. Lunkaran, reported in 1980 GLR 412. Therefore, this Court, at the most, should reduce the amount of rs.40,000/- to Rs.25,000/-.

8. It is true that in case of Mohmed Hanif(supra) the Division Bench of this court awarded Rs.35,000/- to

the injured claimant on the head of shock and suffering where his both the legs were amputed below the knee. However, we must state that in Mohmed Hanif's case (supra) the accident took place prior to 1972 for which claim petition was filed in 1972. The learned Tribunal passed the Award which was challenged in First Appeal in 1974, which came to be decided by the Division bench of this Court in 1979. It was a case of a major person whose earning was assessed at the rate of Rs.1950/- per year and applying multiplier of 15 years the claimant was awarded the amount. In addition to that Rs.35,000/- was awarded on the head of shock and suffering. From the aforesaid judgment we do not find that how many time the claimant Mohmed Hanif had to under-go operation and what period he had to remain in hospital. In the instant case minor Prakash was hardly aged 8 years. He had to undergo treatment and torture for months together. At the first instance he had to remain in hospital continuously for a period of 2 months where he has operated twice. First time his left leg was to be amputate below the knee, but the said operation was unsuccessful and after some time another operation was to be performed and at that time and again his left leg was amputate above the knee. If he had to remain in hospital again for another operation. Thus, in all three operation was to be performed. 2nd time he had to remain in hospital for couple of days. It is not only that in the accident his left limb was to be amputated, in the accident he had received injury on right leg and also received injury on his head. Thus, considering the suffering of minor if the learned Tribunal has awarded Rs.40,000/- as shock and suffering on the head of pain, shock and suffering which cannot be considered to be higher side which called for our interference in this Appeal. Hence, the first submission of Ms.Desai that the Tribunal has wrongly awarded Rs.40,000/- on the head of pain, shock and suffering which is on a higher side has to be rejected and hence it is hereby rejected.

9. Ms.Desai then contended that in the instant case minor Prakash was hardly aged about 8 years and therefore learned Tribunal ought not to have assessed the future loss of income at the rate of Rs.400/- per month and applying the multiplier of 20. There is some substance regarding multiplier of 20, but when the learned Tribunal in its discretion thought it fit to apply multiplier of 20, then we would not interfere with the multiplier of 20 applied by the Tribunal, more particularly when the learned Tribunal has assessed future loss of income at the rate of Rs.400/only. In the instant case the parent of minor Prakash wanted that their son should become

Engineer. They are poor agricultural labourer. Now they would not be able to make their son "Engineer". If they could not make their son "Engineer" then, they being the agricultural labourer, their son would have definitely become agricultural labourer. His income as Agricultural labourer could have been easily assessed at the rate of Rs.600/- p.m. whereas the learned Tribunal has assessed the same at the rate of Rs.400/- and applying multiplier of 20 the learned Tribunal has awarded Rs.96,000/towards future loss of income. Therefore, even multiplier applied by the learned Tribunal on a higher side then also ultimately even if we applies multiplier of 16, then also it would not make any difference with the total amount awarded by the learned Tribunal by way of compensation towards future economic loss.

10. In view of the above discussion, we do not find any substance or merit in this Appeal. Accordingly it fails and dismissed with cost. If the amount with cost and interest is still lying deposited in the Bank then the learned Tribunal may now order to hand over the same to the minor who has now attained the majority by way of Account Payee cheque.

(B.J.Shethna, J.)
Date : December 03, 2002
(Kundan Singh,J.)
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